

Yackulic, Ted

From: Villa, Clifford
Sent: Tuesday, April 01, 2014 11:29 AM
To: Justin D. Leonard; Frederick.Phillips@USDOJ.GOV
Cc: Yackulic, Ted; Feldman, Stephen (Perkins Coie)
Subject: RE: ABSORBENT - EPA / Bankruptcy Estate Issues

Justin: In response to your question re: status of ongoing work –

Queen Avenue: On 3/21, given problems with the contractors hired by the Ellis group, EPA assumed performance of the remaining work under the UAO, including the tricky clean-out of the carbon canisters that had the highest concentrations of acrylonitrile contamination. This work was completed on Sunday, two days ago. I believe EPA still has equipment at Queen, which may be moved over to Ferry Street soon.

Ferry Street: Given multiple emergencies, including deployments to the Oso landslide, our contractors were not able to proceed directly to Ferry Street this week as originally planned. However, we now plan to have our full team on-site at Ferry next Monday, 4/7, with an eye toward completing the remaining cleanup there by the following Saturday, 4/12. Obviously, we are in a dynamic environment, and if things change again, I will let you know. But that is the status and plan for now.

Clifford J. Villa

Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
(206) 553-1185 (office) | (206) 419-2744 (cell)

From: Justin D. Leonard [mailto:jleonard@ml-llp.com]
Sent: Sunday, March 30, 2014 1:55 PM
To: Frederick.Phillips@USDOJ.GOV
Cc: Yackulic, Ted; Villa, Clifford
Subject: Re: ABSORBENT - EPA / Bankruptcy Estate Issues

Fred -- thanks for the response. When you said the agreement had been approved, I wondered whether that meant it had also been published -- thus starting the approval/comment period running. I appreciate the clarification and your confirmation that the settlement agreement as drafted indeed precludes any EPA claims against the Estate -- even in regards to the further, ongoing cleanup efforts.

Your understanding of the claims pool and assets of the Estate is accurate. There is no way that admin claims will be paid in full and definitely not any general unsecured claims. Our settlement with the EPA will deplete almost all of the Estate's assets besides the professional administrative expenses incurred to date.

I look forward to an update regarding the ongoing work and Ferry cleanup timeline when it's convenient.

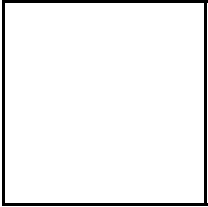
Thanks,

Justin

- - -

Justin D. Leonard

Admitted in Oregon, Washington & Idaho



McKittrick Leonard LLP | Commercial Bankruptcy & Business Law

111 SW Columbia, Ste. 1100 | Portland, OR 97201

P 971.634.0190 | F 971.634.0250 | **D 971.634.0192**

On Sun, Mar 30, 2014 at 1:28 PM, Phillips, Frederick (ENRD) <Frederick.Phillips@usdoj.gov> wrote:

Justin – the agreement cannot be published until after it has been approved. As I said, I expect that it will be approved this week and then will be published within a couple days thereafter. Your reading of the settlement is what we agreed upon, though as we’ve discussed, Ted and I can only recommend approval of the settlement – which we have done. I should add that our agreement is based, in part, on our understanding that the estate lacks sufficient assets to pay admin claims in full and is unable to pay general unsecured claims at all.

Thanks,

Fred

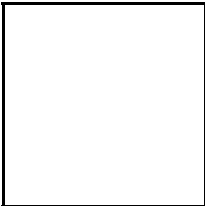
From: Justin D. Leonard [mailto:jleonard@ml-llp.com]
Sent: Friday, March 28, 2014 8:37 PM
To: Phillips, Frederick (ENRD)
Cc: Yackulic, Ted; Villa, Clifford
Subject: Re: ABSORBENT - EPA / Bankruptcy Estate Issues

Thanks Fred -- can you also address #3 and #4 below?

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Justin D. Leonard

Admitted in Oregon, Washington & Idaho



[McKittrick Leonard LLP](#) | Commercial Bankruptcy & Business Law

111 SW Columbia, Ste. 1100 | Portland, OR 97201

P [971.634.0190](tel:971.634.0190) | F [971.634.0250](tel:971.634.0250) | D [971.634.0192](tel:971.634.0192)

On Fri, Mar 28, 2014 at 6:19 AM, Phillips, Frederick (ENRD) <Frederick.Phillips@usdoj.gov> wrote:

Justin – sorry that we’ve not gotten back to you sooner -- Ted is on vacation and I’ve been completely consumed by another matter this week. The approved Settlement Agreement has not yet been returned to me. Unfortunately, the person who has to approve the settlement also supervises the Deepwater Horizon litigation and he has mostly been gone in recent weeks. I expect to have the signed agreement next week.

I believe that Ted is back on Monday. In any case, he (or Cliff) will be able to fill you in on what’s happening regarding further cleanup efforts.

Thanks,

Fred

From: Justin D. Leonard [mailto:jleonard@ml-llp.com]
Sent: Thursday, March 27, 2014 7:25 PM
To: Yackulic, Ted; Phillips, Frederick (ENRD); Villa, Clifford
Subject: Fwd: ABSORBENT - EPA / Bankruptcy Estate Issues

Ted & Fred (& Cliff),

I'm circling back on the following message/questions, because I understand that things are moving quickly in regards to the Ferry site and I want to address these issues ASAP so we're on the same page.

In case the "out of office until Thursday September 19" message I received from Ted was accurate, I'm copying Cliff as I understand he's working on these issues too.

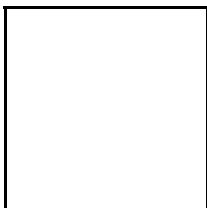
Thanks,

Justin

- - -

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Admitted in Oregon, Washington & Idaho



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P [971.634.0190](tel:971.634.0190) | F [971.634.0250](tel:971.634.0250) | D [971.634.0192](tel:971.634.0192)

----- Forwarded message -----

From: **Justin D. Leonard** <jleonard@ml-llp.com>

Date: Tue, Mar 25, 2014 at 3:02 PM

Subject: ABSORBENT - EPA / Bankruptcy Estate Issues

To: "Yackulic, Ted" <yackulic.ted@epa.gov>, "Phillips, Frederick (ENRD)" <Frederick.Phillips@usdoj.gov>

Ted & Fred,

A few questions and requests:

1. Shawn Ryan forwarded the following EPA update re Ferry. I'd like to touch base with you regarding the Ferry and Queen situations when it is convenient.
2. Meanwhile, can you please forward a fully-executed copy of the newly-updated EPA settlement agreement as revised by the EPA for the AG's review?
3. Has the EPA settlement agreement been published for comment yet? If so, what is the timeframe?
4. I'd like confirmation from you in writing that the EPA settlement language precludes the EPA from making any further claims against the Estate. Based on our last discussions on the phone, I understand that you read the settlement as I do, that the EPA is not able to file any claim in the case -- even a claim for new response costs not covered in the last agreement. This is consistent with what the Court approved, and it seems reasonable since we're essentially using nearly all of the unaccounted-for funds of the Estate to pay a significant share of the EPA costs.

Now that the "green light" from the EPA has turned to red again (for good reasons, I'll admit), I want to make sure we don't have an issue with moving forward with the current settlement. The Trustee doesn't want to back out of the deal, but we're going to need to do so if the settlement does not confer a complete release of the Estate as we represented to the creditors and the Court.

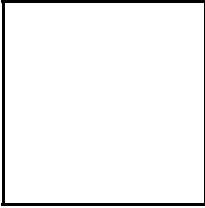
Thanks,

Justin

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From: Yackulic, Ted [mailto:yackulic.ted@epa.gov]

Sent: Friday, March 21, 2014 2:16 PM

To: Shawn Ryan

Cc: Villa, Clifford; Frederick.Phillips@USDOJ.GOV

Subject: Ferry Street Q

Shawn,

I understand EPA anticipate that it will start work at Ferry by Wednesday or Thursday next week, estimate that the work may take up to 10 days, and cost over \$200,000 if performed by EPA and its contractors. You've indicated that your client may want to perform the work. Let me if this is the case as soon as you can. Consistent with the recent work at Queen, EPA would insist that the work be performed pursuant to an administrative order which would be issued early next week. Thanks.

Ted Yackulic, Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 10

1200 Sixth Avenue, Suite 900

Seattle, WA 98101

Phone: [206-553-1218](tel:206-553-1218)

yackulic.ted@epa.gov